

**BOARD OF ASSESSMENT APPEALS,  
STATE OF COLORADO**

1313 Sherman Street, Room 315  
Denver, Colorado 80203

**Docket No.: 61945**

Petitioner:

**JUSTINA BUTTON,**

v.

Respondent:

**JEFFERSON COUNTY BOARD OF  
COMMISSIONERS.**

**ORDER**

**THIS MATTER** was heard by the Board of Assessment Appeals on September 19, 2013, Brooke B. Leer and Amy J. Williams, presiding. Petitioner, Ms. Justina Button, appeared pro se. Respondent was represented by David Wunderlich, Esq. Petitioner is requesting an abatement/refund of the property taxes on her property for the 2010/2011 tax years.

Subject property is described as follows:

**5375 West 60<sup>th</sup> Avenue  
Arvada, Colorado 80003  
Jefferson County Schedule Number 010418**

The subject property consists of a 1,225 square foot single family residence with a 374 square foot unfinished basement and a 3,077 square foot garage. The residence was constructed in 1952 of masonry construction with a flat roof. The garage was constructed in 1985 and has two stories, a 2,548 square foot first floor and a 529 square foot second floor. The garage construction is concrete block. These improvements are located on two legally platted lots which have been combined into one schedule for property tax purposes. The metes and bounds legal description was not supplied, but the improved lot totals 15,300 square feet and the adjacent lot void of improvements consists of 47,135 square feet. Zoning for both lots is CCB; Clear Creek Sub-district B Residential.

Petitioner is requesting no more than 522 square feet of the garage be classified commercially. Petitioner did not state a specific actual value requested for either tax year 2010 or

2011. Respondent assigned a value of \$276,400 for the subject property for tax year 2010 and \$425,300 for tax year 2011.

On or about May 25, 2011, Petitioner filed a protest with respect to the 2011 property tax valuation and a Notice of Determination was issued on August 16, 2011. Pursuant to Section 39-10-114(10(a)(I)(D), C.R.S., overvaluation claims under the abatement procedure are prohibited if a taxpayer has previously challenged the valuation for that tax year under the protest and adjustment procedure. For tax year 2011, Petitioner has previously challenged the 2011 valuation under the protest and adjustment procedure. Petitioner's current abatement appeal for tax year 2011 is based on overvaluation claims. Accordingly, pursuant to Section 39-10-114(10(a)(I)(D), C.R.S., this Board is without jurisdiction to hear Petitioner's protest pertaining to the 2011 valuation of the subject property. Therefore, this order will decide valuation and classification issues for tax year 2010 only.

Petitioner, Ms. Button, called Tanya Markle as her first witness. Ms. Markle testified that she is Ms. Button's daughter and lived on the property and played there as a child. She stated that the vacant lot was used as her playground in association with the residence in which she lived. On cross examination, Ms. Markle, in response to Mr. Wunderlich's question relative to the use of the garage, testified that approximately 520 to 530 square feet of the garage was used for a retail bird store, the bird store closing in approximately 2013.

Ms. Button then called Michelle Lemmon as her second witness. Ms. Lemmon testified that she has known Ms. Button since 2000. She met her when she adopted a bird. She testified that the upstairs of the garage was not really used at all; that in her experience, a small room in the first floor of the garage was used for retail purposes. Ms. Button asked how the yard area was used, to which Ms. Lemmon testified that in her experience it was used for ceremonial purposes. On cross examination, Mr. Wunderlich asked if she had assisted Ms. Button in running the retail bird shop. Ms. Lemmon responded that she had, from time to time, assisted Ms. Button in 2010 and 2011 with the retail bird store. Mr. Wunderlich asked her to look at Respondent's Exhibit A, Page 15. He asked if the picture showed bird cages. Ms. Lemmon responded yes.

The third witness called by Ms. Button was Shayla LaBorde. Ms. Button asked her to explain why there were bird cages in the garage. Ms. LaBorde testified that the bird cages were used for bird sanctuary purposes. She further testified that a small portion of the garage was used for the bird retail store and that the driveway of the garage was used for customer parking. She testified that the front yard was home to ducks and chickens and that the back yard included a camp trailer, shed and sweat lodge. Ms. LaBorde stated that the garage was unfinished.

Petitioner, Ms. Button, testified as the fourth witness. In her testimony she stated that 522 square feet of the garage is used as a retail bird store and that this is the only area of the property used for commercial purposes. She stated the upstairs has been unusable since 2001 due to a damaged roof and mold issues. She testified that the unimproved, legally platted lot was used in conjunction with the residence and for Native American religious ceremonies. On cross examination, Mr. Wunderlich asked her when she closed her bird sanctuary, to which she replied 2008. She stated that she alerts the local fire department when ceremonial fires will be lit for Native American religious services. Mr. Wunderlich asked Ms. Button if she had any documentation of the mold

problem asserted in the upper level of the garage. Ms. Button testified in response that she had supplied pictures within Petitioner Exhibit 15. She further testified that while no receipts were provided, she had spent at least \$10,000 in an effort to repair the garage and mitigate the resulting mold problem. Mr. Wunderlich asked her if the upstairs of the garage had been condemned by any governmental authority. Ms. Button responded no, she had just personally found it unusable due to her health concerns associated with the mold.

Petitioner did not request a different value, but did request that a commercial classification be limited to 522 square feet of the garage and the remainder of the property be classified residential for property tax purposes.

Mr. Wunderlich called Ms. Darla Jaramillo, Certified General Appraiser, to testify. Ms. Jaramillo testified that she performed an on-site inspection on May 22, 2013. Ms. Jaramillo discussed valuation methodology and classification allocation relative to a mixed-use property like the subject. She stated that the subject was two legal lots, one being able to be sold separate from the other; one included all of the improvements and the other was vacant. Both subject lots were zoned commercial allowing for commercial use only, though the subject residential use is considered a legal, non-conforming use.

Ms. Jaramillo further testified to the commercial land sales used to value the land. Three land sales were presented within her appraisal report, Respondents Exhibit A, supporting a range of value between \$6.26 per square foot and \$7.00 per square foot. Ms. Jaramillo concluded to a value of \$6.60 per square foot for both of the subject commercially zoned lots. Ms. Jaramillo then presented three residential sales which were used to value the subject residence. These three sales, after deducting the appropriate site valuation, supported a value of \$120,000 for the residential improvement only. Finally, Ms. Jaramillo testified to the cost data utilized to value the garage, stating she used low quality cost figures as opposed to adjusting for the partial finish of the subject. Ms. Jaramillo directed her testimony to Page 41 of Respondent Exhibit A for a summation of the subject valuation, concluding to a value of \$639,360.

During cross examination by Petitioner, Ms. Jaramillo was questioned regarding the lack of her consideration that the garage was used in conjunction with the residence. Ms. Jaramillo responded that the retail bird store use negated her ability to have the garage considered for residential classification. Petitioner then asked why she concluded to a value higher than the subject list price, a list price which had received zero interest. Ms. Jaramillo testified that listings were not considered in her appraisal process. Finally, Petitioner asked why an adjustment was not made for the damage present in her home. Ms. Jaramillo responded that she had utilized residential sales which were in fair condition, representative of the subject condition.

Respondent assigned an actual value of \$276,400 to the subject property for tax year 2010. This value was assigned by the Jefferson County Board of Equalization. The appraised value supported in Respondent's appraisal, Respondent Exhibit A, being higher, that of \$639,360.

Petitioner provided sufficient evidence to show that the 2010 classification of the subject property was incorrect. However, Petitioner did not provide sufficient evidence to show that the 2010 valuation of the subject property was incorrect.

The Board notes in this decision that Petitioner did not provide any valuation evidence supportive of a different value than that assigned by the Jefferson County Board of Equalization. Nor did Respondent provide any evidence to support the Jefferson County Board of Equalization assigned value of \$276,400. Respondent did provide evidence in support of a much higher value, that of \$639,360, which the Board rejects as accurate or supported. Ms. Jaramillo, as presented in her appraisal and through her testimony, valued component parts of the subject property according to differing highest and best use and then summed those component parts without regard to the property value as a whole. This is inappropriate and unsupported by appraisal theory and techniques and is also unsupported by the Assessor Reference Library.

Finally, the Board disagrees with a commercial classification for the majority of the property. Based upon all of the evidence and testimony presented the commercial use is concluded to be relatively incidental and is confined to approximately 522 square feet of the garage. The total square footage of the property is 4,676 square feet, the 522 square feet used commercially being 11 percent of the total square footage. Therefore, the Board directs that 10 percent, rounded, or \$27,640 of the total value, be classified commercially.

**ORDER:**

The petition is denied as to value. The petition is granted as to classification. The Jefferson County Assessor is directed to change the assessment records of the subject property to reflect:

Commercial Classification -	\$ 27,640
Residential Classification -	<u>\$248,760</u>
Total Valuation	\$276,400

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

**DATED and MAILED** this 18th day of October, 2013.

**BOARD OF ASSESSMENT APPEALS**  
*Brooke B. Jeer*

Brooke B. Jeer

*Amy J. Williams*

Amy J. Williams

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

*Milla Lishchuk*

Milla Lishchuk

